

REMARKS

Applicants thank the Examiner for the careful consideration given to this application. Reconsideration is now respectfully requested in view of the amendments above and the following remarks.

Claims 1-5 are pending. Claims 1, 4, and 5 have been amended without prejudice herein. Claims 2 and 3 have been cancelled without prejudice herein. Claim 6 has been added. No new matter has been added.

Claims 1-5 stand rejected under 35 U.S.C. § 101 as allegedly being directed to non-statutory subject matter. Claims 1-5 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. Claims 1, 2, and 5 stand rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Pat. Pub. No. 2003/0163593 to Knightly (hereinafter “Knightly”). Applicants respectfully request reconsideration and withdrawal of these rejections for at least the following reasons.

Claim Rejections Under 35 U.S.C. § 101

Turning first to the 35 U.S.C. § 101 rejections, Applicants have amended the claims and respectfully request reconsideration and withdrawal of these rejections. Applicants submit that all claims are directed to patentable subject matter. First, all claims are directed to a “method,” which is a “process” for purposes of patentability. A process is one of the four patent-eligible subject matter categories under 35 U.S.C. § 101. The amended claims are further sufficiently tied to a particular machine or apparatus so as to satisfy the machine-or-transformation test.

The process of Claims 1 and 4 are explicitly tied to a “Resilient Packet Ring” and its nodes. Claims 5 and 6 depend from Claims 1 and 4 respectively and so are likewise tied to a “Resilient Packet Ring” and its nodes. Every claim, therefore, is specifically tied to nodes of a Resilient Packet Ring and thus tied to a particular machine or apparatus, which is to be interpreted broadly to include electrical, electronic, and other devices. Meaningful limits on the pending claims’ scopes are therefore imposed.

Further, it may be noted the specific tying to the nodes on the Resilient Packet Ring is not insignificant “extra-solution” activity. Instead, the Resilient Packet Ring, and the nodes thereof, are integrally incorporated into the methodology of the pending claims, which recite “method[s] for dynamically allocating link bandwidth on a Resilient Packet Ring.”

Further yet, the pending claims have real world application by dynamically allocating link bandwidth on a Resilient Packet Ring, based on fairness bandwidth calculation per advertisement interval. Accordingly, the pending claims of the present invention are directed to patentable subject matter under 35 U.S.C. § 101. Thus, applicants respectfully request reconsideration and withdrawal of the rejections under 35 U.S.C. § 101.

Claim Rejections Under 35 U.S.C. § 112

Turning next to the 35 U.S.C. § 112, second paragraph, rejections, Applicants have amended (1) “the advertising rate” in original line 7 of claim 1 to “an advertising rate,” and (2) “the advertising rate provided by a downstream node” in original line 8 of claim 1 to “an advertising rate provided by a downstream node.” *Claim 1 (“determining **an** advertising rate of each node . . . based on . . . **an** advertising rate provided by a downstream node”).* Claims 2 and 3 have been cancelled and Claims 5 and 6 depend from independent Claims 1 and 4, respectively. Accordingly, all claims of the present application conform to 35 U.S.C. § 112. Thus, applicants respectfully request reconsideration and withdrawal of the rejections under 35 U.S.C. § 112, second paragraph.

Claim Rejections Under 35 U.S.C. § 102

Claims 1, 2, and 5 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Knightly. Applicants request reconsideration and withdrawal of these rejections for at least the following reasons.

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. v. California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

Accordingly, to anticipate any claims of the present application, Knightly must teach each and every element recited thereby.

Claim 1 has been amended to incorporate features of cancelled claim 3. The Examiner has indicated “[c]laim 3 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph and 101 rejection, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.” *6/3/09 Office Action at 3*. Specifically, the Examiner has acknowledged “[i]n combination with Claims 1 and 3, prior art fails to teach the Step b.” *Id. at 4*.

Applicants respectfully submit that Knightly does not teach or suggest the subject matter of Claim 1, which has been amended to incorporate the limitations of prior Claim 3. Claim 1 is therefore novel under 35 U.S.C. §102. Claim 5 depends from Claim 1, which, based on the above, is not anticipated by Knightly. Claim 5 is therefore novel under 35 U.S.C. § 102. Accordingly, Knightly does not teach or suggest each of the limitations of Claim 1 or 5, so the Examiner’s rejection thereof should be withdrawn. Thus, Applicants respectfully request reconsideration and withdrawal of the rejections under 35 U.S.C. § 102.

Claim 4 has also been amended to be independent in form. No prior art-based rejection of Claim 4 has been asserted. Accordingly, Applicants submit Claim 4 is also in condition for allowance. Claim 6 depends from claim 4, which is not anticipated by Knightly.

CONCLUSION

Applicants may not have presented all possible arguments or have refuted the characterizations of either the claims or the prior art as found in the Office Action. However, the lack of such arguments or refutations is not intended to act as a waiver of such arguments or as concurrence with such characterizations.

In view of the above, reconsideration and allowance of the subject application is respectfully solicited.

In the event the Examiner believes an interview might serve in any way to advance the prosecution of this application, the undersigned is available at the telephone number noted below.

Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 03-2775, under Order No. 16663-00001-US from which the undersigned is authorized to draw.

Dated: September 3, 2009

Respectfully submitted,
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